Supreme Court, U.S.
FILED
APR 19 1993
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92-1594

No. _____

In the SUPREME COURT OF THE UNITED STATES

October Term

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STATE OF NEBRASKA,

Petitioner,

v

STEVEN W. CHILDS,

Respondent.

_____+_____

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Is the investigatory stop of a legally temporarily registered motor vehicle unreasonable within the meaning of the Fourth Amendment when made without reasonable suspicion that any criminal activity has occurred or is about to occur?

REASONS FOR NOT GRANTING THE WRIT

Petitioner properly cites to Section 60-320(5) in its Petition in quoting as follows: "[i]t shall be the duty of all law enforcement officers to arrest and prosecute all violators" of the registration statutes of the state of Nebraska. The key word is "violators." The arresting officer did not suspect that the Respondent was a violator of any statute, registration or otherwise, and so testified in the pre-trial motion-to-suppress hearing. Respondent was in fact in compliance with the registration laws.

Petitioner has previously argued that the expiration date printed on the "In Transit" stickers is not large enough to read from a great distance. The particulars of the contents and size of the "In Transit" stickers is, however, spelled out in Section 60-320 by the Nebraska Legislature. Petitioner should address such problems, therefore, to the

Nebraska legislature, not the judicial branch of government. The legislature is, of course, also concerned about other factors, such as safety, in designating the size of an "In Transit" sticker, not wanting to totally obliterate the view out of the rear window by making the stickers unreasonably large.

Petitioner includes the holding of the Nebraska Court of Appeals on pages 18a through 24a of its Petition. On 23a, second paragraph, one can see that the Court of Appeals feels that a "15-day window" can be found in the Fourth Amendment, because 15 days is not an "unlimited interference." That same reasoning could provide for a 20 year window in stopping young black males from the ages of 15 through 35, because such a period is not an "unlimited interference."

Stopping newly purchased "In Transit" vehicles in Omaha is a practice only of the Omaha Police Department. The Douglas County Sheriff's Department demands probable cause from their officers. The use of this type of stop by the Omaha Police Department is mainly confined to North Omaha, the predominantly minority and poorer section of the city of Omaha. Respondent was stopped in North Omaha, and he lives in North Omaha. Obviously, by its unanimous decision, the Supreme Court of the State of Nebraska wished to put a stop to this clearly unconstitutional practice.

Finally, Petitioner argues that "In Transit" stickers automatically raise a reasonable suspicion of criminal activity. It would therefore be true that an individual who obeys every section of the registration statutes as prescribed by the Nebraska legislature will be considered a criminal by the State and stopped whenever the State desires. Another individual, however, who, instead of obeying the registration laws of the State of Nebraska, goes out and steals a set of license plates from another car, a criminal act, will be considered not to have raised a reasonable suspicion of criminal activity by driving on such stolen plates. Alice in Wonderland could not have imagined a more topsy turvy rule of law.

CONCLUSION

This Court has arrived at a balance between the State's interest in enforcing its registration laws and an individual's right to privacy in Delaware v. Prouse, 440 U.S. 648, 99 S.Ct. 1391 (1971). This Court has established that the State must show "reasonable suspicion" of criminal activity to make a stop. Since the State's only witness in the motion-to-suppress hearing of the above encaptioned case denied any suspicion of criminal activity, the State has failed to present even a prima facie case of justifiable cause to stop Respondent's vehicle.

Wherefore Respondent prays the Court to deny Petitioner's request for a Writ of Certiorari.